

ADMINISTRATION VIEWS ON S. 1328/H.R. 1872

In partnership with the House and Senate, the Administration has worked tirelessly and effectively over the last four years to promote the restructuring and privatization of INTELSAT and Inmarsat, two intergovernmental organizations that provide wholesale satellite capacity for international telecommunications. In March, INTELSAT's member governments spun off six satellites into a private corporation, New Skies Satellites, N.V. INTELSAT's Director General-elect has stated unequivocally his commitment to achieve privatization by 2001. Most important, in April, Inmarsat's member governments voted to privatize all of that organization's business operations beginning in early 1999.

The attention Congress has given to INTELSAT and Inmarsat has helped significantly to demonstrate the importance the United States places on a rapid, pro-competitive privatization of these organizations. This has strengthened the United States' negotiating position in the ongoing process of transforming INTELSAT and Inmarsat into commercial entities on an even footing with other market participants.

The Administration strongly supports the goal of S. 1328/H.R. 1872: to promote competition in international satellite communications markets by encouraging the timely and pro-competitive privatization of INTELSAT and Inmarsat. However, key provisions of the bill would undermine, rather than contribute to, the realization of this important goal.

I. Competition Policy Concerns

S. 1328/H.R. 1872 is likely to reduce, not increase, competition in the U.S. market for global satellite telecommunications services:

- Absent its full privatization by January 1, 2002 on terms dictated by the bill, INTELSAT would be prohibited from providing new and many existing services to U.S. consumers, including high-speed data transmission, Internet access and video. Because privatization on the bill's terms is unrealistic (among other problems, 142 other governments would have to accept these terms), this prohibition would likely be triggered. Similarly, the bill would prohibit Inmarsat from providing all non-emergency services for which there are alternative providers, if the organization is not fully privatized by January 1, 2001 according to the statutory conditions.
- Thus the bill may effectively eliminate two important service providers from the most rapidly growing markets for global satellite services -- markets which may be served by only a small number of firms, given the inherent structure of this industry (high fixed costs and large economies of scale). The result: fewer options and higher prices to U.S. consumers, including the federal government.

Although the bill includes some protections if few alternative providers exist, they are unlikely to be sufficient to ensure that American consumers are not harmed.

- The bill would prohibit FCC licensing of any service provider using satellites owned by INTELSAT/Inmarsat spinoff or successor entities, if the number of competitors in the markets served by these entities is not sufficient to create a "fully competitive market." Like the U.S. long distance market, some elements of the international satellite service market may never be "fully competitive." Nevertheless, the bill would limit access of an entity whose entry would **contribute** to competition in the U.S. market. The appropriate market access standard is the **conduct of the service provider**, not an **ex ante showing that the market is "fully competitive."**
- Even before the statutory deadlines for privatization, the bill would restrict the provision by INTELSAT and Inmarsat of "additional services," including additional applications of **existing** services such as high speed data transmission that INTELSAT and Inmarsat are **already** providing. To approve such services, the FCC would have to make annual findings that INTELSAT and Inmarsat are meeting statutory milestones that require agreement by as many as 142 other countries.
- S. 1328/H.R. 1872 almost guarantees that New Skies Satellites will not get access to the U.S. market: The bill requires that New Skies hold its initial public offering (IPO) by March 31, 1999 in order for the FCC to grant it market access. However, New Skies' IPO is scheduled for late 1999, in keeping with the conditions agreed to by the United States when it was created. The FCC and the Justice Department already have the authority to keep New Skies out of the U.S. market if its entry would harm competition, and the Administration has committed to do so.
- The restrictions in the bill may actually slow privatization of INTELSAT and Inmarsat, thereby reducing future competition. For example, as one condition, Inmarsat would have to relinquish all radio frequencies assigned to it by January 1, 2006 (or the end of the life of the corresponding satellite). Limiting investor interest in INTELSAT and Inmarsat would likely delay effective privatization.

II. Constitutional and Governance Concerns

S. 1328/H.R. 1872 raises concerns about the President's foreign policy prerogatives and eliminates appropriate FCC discretion:

- Provisions of S. 1328/H.R. 1872 purport to require the President to adopt specific positions on ISO privatization that would make international negotiations unwieldy and cumbersome, thus frustrating the President's ability to conduct

foreign policy effectively. The bill also gives the FCC exclusive authority to determine if the outcome of multilateral negotiations is suitable -- a determination that should be made by the FCC in consultation with the Executive Branch.

- By dictating the FCC's treatment of INTELSAT and Inmarsat spinoffs and successor entities, S. 1328/H.R. 1872 eliminates the FCC's discretion to conduct its public interest analysis, under the Telecommunications Act, of license applications for satellite services from foreign service providers.

III. Trade Policy Concerns

S. 1328/H.R. 1872 may provoke retaliation from U.S. trading partners and undermine U.S. efforts to accelerate the privatization of INTELSAT and Inmarsat:

- Some countries may view the bill as a means of favoring U.S. satellite services firms and impose retaliatory trade measures or delay opening their telecommunications markets. This perception also would undermine efforts by the United States to accelerate the privatization of INTELSAT and Inmarsat and to ensure that privatization is pro-competitive.

Our trading partners have raised questions regarding the consistency of S. 1328/H.R. 1872 with the United States' WTO obligations:

- The bill would require the FCC to limit or deny licenses to INTELSAT and Inmarsat spinoffs or successor entities if a detailed set of statutory conditions are not met, including conditions relating to the competition policies and WTO commitments of the country in which the entity is incorporated or headquartered. Under the WTO agreement on basic telecom services, the United States is obligated to provide most favored nation treatment, national treatment and market access, and to apply basic principles of administrative fairness, to satellite services providers of WTO member countries. Several of our trading partners have already written to the U.S. to question the consistency of the bill with WTO obligations.
- In conducting its public interest analysis under the 1996 Telecommunications Act, the FCC is expected to accord deference to the Executive Branch agencies on matters uniquely within their competence, including national security, law enforcement, foreign policy and trade concerns. As drafted, S. 1328/H.R. 1872 requires the FCC to "take into consideration" U.S. obligations under the WTO basic telecom services agreement. Mere "consideration" may not give sufficient comfort to our trading partners, however. The FCC, in consultation with the Executive Branch, should have the flexibility to issue or condition a license in a

manner that is consistent with the United States' international obligations.